IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 31546 of 2005(E)

AGAINST THE ORDER DATED 08/08/05 IN IA 1033 2005 IN OPMV.684/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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PETITIONERS:

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1. E.K.MOHAMMED ALI HAJI, SHINAM MANZIL, CHEMBILODE, P.O.MOWANCHERY.

2. KUNHIKARIYIL SHIHABUDHEEN, NIBRAS HOUSE, IRIVERI, P.O.IRIVERI.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN

RESPONDENTS:

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1. P.RAGHAVAN, S/O.AMBU, POOVANATH HOUSE, P.O.MUZHAPALA, KANNUR DISTRICT.

2. MESSRS UNITED INDIA INSURANCE CO LTD., KANNUR-2, KANNUR DISTRICT.

BY ADV. SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SRI.P.MURALEEDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE OCUNTER STATEMENT IN OP(MV) NO.684 OF 1998 OF MACT, THALASSERY.

EXT.P2 : TRUE COPY OF THE AWARD DT.20.08.2004 IN OP(MV) NO.684 OF 1998 MACT, THALASSERY.

EXT.P3 : TRUE COPY OF THE JUDGMENT DT.28.12.99 OF CJM, THALASSERY IN CC NO.240 OF 98.

EXT.P4 : TRUE COPY OF THE PETITION ALONG WITH AFFIDAVIT AND ORDER DT.8.8.05 IN IA NO.1033 OF 2005 OF MACT, THALASSERY.

EXT.P5 : TRUE COPY OF THE PETITION IA NO.255 OF 2005 IN OP(MV) NO.684 OF 1998 OF MACT, THALASSERY.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31546 OF 2005

Dated this the 4th day of June, 2007

JUDGMENT

Ext.P4 order by which the Motor Accident Claims Tribunal dismissed an application submitted by the petitioners who were respondents 1 and 2 in OP (MV) No.684 of 1998 is under challenge in this proceeding under Article 227 of the Constitution.

2. Heard Sri.Rakesh Roshan, learned counsel for the petitioner and Sri.K.C.Santhosh Kumar, learned counsel for the respondents. Mr.Rakesh Roshan submitted that a written statement had been filed by the petitioners wherein they had contended that the vehicle in question was not driven by the 2nd petitioner at the time of the accident. Since there was some delay in filing that written statement, an application had been filed for reception of the same which was dismissed by the learned Tribunal. Counsel submitted that the only reason on which the learned Tribunal found that there was no force in the contention that the vehicle was not driven by the 2nd petitioner was that the police has registered a case against the 2nd petitioner. Inviting my attention to Ext.P3 judgment in the criminal case against the 2nd petitioner, learned counsel submitted that the 2nd petitioner was acquitted by the learned Magistrate. The judgment supports the contention that the vehicle was not driven by the

2nd petitioner submitted the counsel.

3. I have gone through Ext.P3. Under Ext.P3, the 2nd petitioner herein is acquitted on the reason that the prosecution has not established his guilt. There is no finding to the effect that the vehicle was driven somebody other than the 2nd petitioner. As noticed by the learned Tribunal in Ext.P4, the petitioners' application for reception of the counter filed to OP(MV) No.684 of 1998 had been dismissed and that order had attained finality. That order having attained finality, there was no contention which could have been perused by respondents 1 & 2. In other words, no useful purpose could have been served by setting aside the award. At any rate I am not prepared to agree with the learned counsel who submits that Ext.P4 requires correction under the visitorial jurisdiction, under Article 227 of the Constitution which is expected to be invoked only in exceptional circumstances.

The Writ Petition fails and will stand dismissed. No costs.

PIUS C. KURIAKOSE, JUDGE

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